

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A. No. 301 of 1993

Dated: 8th <sup>March</sup> February, 1995

Hon. Mr. S. Das Gupta, A.M.  
Hon. Mr. J.S. Dhaliwal, J.M.

Jugal Kishore Goyal, son of Sri  
M.L. Goyal, presently posted as  
Commissioner of Income Tax  
(Appeals) Allahabad.

... ... Applicant.

( By Advocate Sri Sudhir Agrawal )

VERSUS

1. Union of India through  
Secretary, Ministry of Finance,  
North Block New Delhi.

2. Central Board of Direct Taxes,  
North Block New Delhi,  
through its Chairman.

... Respondents.

( By Advocate Sri A. Sthaleker )

O R D E R

( By Hon. Mr. S. Das Gupta, Member(A) )

The applicant in this case is a Member of Indian Revenue Service of 1969 batch. When his promotion was due to the rank of Commissioner of Income Tax, he was superseded by his juniors. He filed an Original Application in Jabalpur Bench of this Tribunal and the Original Application was allowed by Jabalpur Bench by their order dt. 17.5.1989 by which the proceedings of the Departmental Promotion Committee (DPC for short) held in April, 1988 were quashed and it was directed that a review D.P.C. be held only to fill up the additional vacancies for the year 1987-88. On S.L.P. by the department, the Supreme Court set aside

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the order of the Tribunal setting aside the proceedings of the D.P.C. of April, 1988. However, it was also directed that the case of the present applicant should be considered afresh and if he is selected, he should be promoted w.e.f. the date on which his next junior was promoted. The respondents after holding a review D.P.C. to consider the applicant, kept the result in sealed cover. This was challenged by the applicant in an application filed before the Principal Bench and the same was allowed by the judgment and order dated 8.10.1991. Pursuant to this order, the respondents issued the impugned order dated 6.3.1992 promoting the applicant to the grade of Commissioner of Income Tax retrospectively w.e.f. 30.12.1988 with a direction that he shall not be entitled for the arrears of salary for the period from 30.12.1988 till he actually takes over the charge of the higher post. Challenging this order, a copy of which is at Annexure-A 1, the applicant has sought the relief of quashing the said order to the extent that it denies arrears of pay to the applicant in respect of his notional promotion and to direct the respondents to pay him arrears of salary as a result of his promotion to the higher post.

2. The respondents have stated in their

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counter reply that the Principal Bench of the Tribunal while decided the application filed by the applicant did not give any direction regarding the arrears of pay and allowances and that accordingly, he has not been granted the arrears of pay and allowances in the higher grade of Commissioner of Income Tax. The respondents have averred that if the applicant was not satisfied with the Tribunal's order, he should have filed a review petition before the Tribunal or Special Leave Petition before the Supreme Court. ~~but~~ instead of doing that, he has filed a fresh application before this Tribunal and such an application is barred by the principle of res-judicata.

3. The applicant has filed a rejoinder affidavit in which his contentions in the O.A. have been reiterated, apart from repelling the contention of the respondents that the present application is barred by the principle of res-judicata.

4. We have heard the learned counsel for both the parties and have carefully gone through the pleadings of the case.

5. We have first considered the plea of the respondents that the present applicant is barred by the principle of res-judicata, ~~since~~

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the matter has already been adjudicated by the principal bench of the Tribunal and the said bench did not pass any order regarding the arrears of pay and allowances. Apart from the factual accuracy or otherwise the contention that the principal Bench did not pass any order regarding the arrears of pay and allowances, we are of the view that the impugned order of the respondents promoting the applicant retrospectively but on notional basis itself gives a fresh cause of action to the applicant and in that view, we do not consider that the present application is barred by the principle of res-judicata.

6. We may now advert to the ~~decision~~. The operative portion of the decision of the Principal Bench of the Tribunal which has given rise to this controversy. A copy of the order dated 8.10.1991 passed by the Principal Bench has been annexed by the respondents as Annexure-C.A. 1. The operative portion of the order relating to the applicant's promotion to the grade of Commissioner, Income Tax reads as follows;

"The interim order dated 1.1.1991 regarding promotion of the applicant as Commissioner of Income Tax is made absolute. In addition, he would also be entitled to all consequential benefits."

It is clear from the wordings of the order that the applicant should not only be promoted as a Commissioner Income Tax but he would also be

entitled to all consequential benefits. It is now the settled position of law that if an employee was actually kept away from working in the higher post by the authorities for no fault of his own, such an employee cannot be denied the back wages, once he is promoted with retrospective effect, by applying the principle of 'No Work No Pay' and ~~as~~ such, an employee shall be entitled to all the back wages of the higher post even if he has taken charge of the post much later than the date of his notional promotion. In the celebrated case of Union of India Vs. K.V. Jankiraman AIR 1991 SC 2010, one of the questions before the Supreme Court was whether as to what benefit an employee would be entitled to, if sealed cover procedure was adopted in his case and he <sup>was</sup> subsequently fully or partially exonerated. Considering this question, the Supreme Court held that there is no doubt that when an employee is completely exonerated and is not visited with the penalty even of ~~censure~~, he should not be deprived of any benefits including the salary of the promotion post. <sup>If was</sup> It was further held,

"The normal rule of "nonwork no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although, the work is offered to him. It is for this reason that P.R.17(1) will also be inapplicable to such cases."

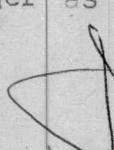
7. The Tribunals' order clearly specifies that the applicant shall be entitled to consequential benefits. There is no specific order that such consequential benefits shall not include the arrears of pay and allowances. The mere absence of specific direction to pay the arrears of pay and allowances in the operative portion of the order cannot be

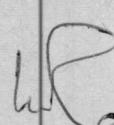
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construed, as the respondents have done, as an authority for denial of such benefits to the applicant. In our view, in the facts and circumstances of the case, the term "consequential benefits" shall include the arrears of pay and allowances which the applicant would have received had he been actually promoted when his junior was promoted.

8. The application is, therefore, allowed. The impugned order dated 6.3.1992 is set aside to the extent that the arrears of pay and allowances will be given to the applicant. He shall be paid such arrears within a period of 3 months from the date of communication of this order. There will be no order as to costs.

(n.u.)

  
Member (J)

  
Member (A)